IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 233 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRABHA ENTERPRISE

Versus

EQUATOR THERMOPLASTICS PVT.LTD

Appearance:

1. COMPANY PETITION No. 233 of 2002

MR NAVIN K PAHWA for Petitioner No. 1

MS MEGHA JANI for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 22/04/2003

ORAL JUDGEMENT

1. This petition has been filed by M/s. Prabha Enterprise, Bombay under the provisions of Sections 433

and 434 of the Companies Act, 1956 [hereinafter referred to as the Act] praying that the respondent, M/s. Equator Thermoplastics Pvt. Ltd., Borsad, Dist. Kheda be wound up as the said Company is unable to pay its debts.

2. It is contended in the petition that the petitioner has served a statutory notice dated 3rd June 2001 on the respondent Company under section 434 of the Act, calling upon the respondent Company to pay the outstanding dues of Rs.7,78,000/-. Endorsement on the copy of the notice indicates that the respondent Company has duly received the said notice. The respondent Company, vide its letter dated 21.05.2001 had confirmed the aforesaid outstanding dues and has stated that on account of poor financial condition, it is unable to pay the said outstanding dues. Inspite of receipt of the said notice, the respondent Company has neither replied to the notice nor paid the amount payable by it. In the circumstances, the present petition has been filed with a prayer that the respondent Company be ordered to be wound up as the Company is unable to pay its debts.

3. In this petition, notice returnable on 20th January 2003 was issued on 10th December 2002. In pursuance of the notice, learned advocate Ms. Megha Jani appeared for the respondeat Company.

4. In the circumstances, the petition was admitted on 4th February 2003 and an order with regard to advertisement was passed on the same day.

5. It is stated by the learned advocate for the petitioner that in pursuance of the order with regard to admission of the petition and the date of final hearing of the petition, an advertisement had been duly published in the Indian Express, Ahmedabad Edition and Jansatta, Ahmedabad Edition and an affidavit to the said effect has already been filed in the Registry.

6. It has been submitted by the learned advocate for the petitioner that though the respondent Company has admitted that it is indebted to the petitioner to the tune of Rs. 7,78,000/- the Company has not paid the said dues inspite of service of statutory notice upon it. He has drawn my attention to the letter addressed by the respondent that the respondent-Company admitting the fact that the respondent Company is in fact indebted to the petitioner but only on account of poor financial condition, it is unable to clear the outstanding dues. Ms. Megha Jani, learned advocate also submitted submitted that due to poor financial condition, the

respondent Company is unable to pay its debts.

7. Looking to the facts stated hereinabove, it is clear that the respondent Company is unable to pay its debts as the Company has not paid the amount payable by it.

8. In the circumstances, the respondent Company is ordered to be wound up. The Official Liquidator attached to this High Court is appointed as an Official Liquidator for taking necessary proceedings for winding up of the Company. The Official Liquidator attached is directed to take possession of the assets of the respondent Company and he is also entrusted with all powers given to him under the provisions of the Act so as to do the needful and to distribute its assets in accordance with law.

9. Till the official Liquidator takes charge of the affairs of the respondent-Company, the respondent Company is restrained in any manner dealing with, disposing of, part with possession or creating third party rights or interest of the asses of the Company.

10. This petition stands disposed of as allowed.

[RAVI R. TRIPATHI, J.]
mathew